

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

FILED  
DATE: 4-1-2011  
5:03 O'Clock P.M.  
JEANNE HICKS, CLERK  
BY: T. Brogdon  
Deputy

DIVISION PRO TEM B  
HON. WARREN R. DARROW  
CASE NO. V1300CR201080049

JEANNE HICKS, CLERK  
BY: T. Brogdon, Deputy Clerk  
DATE: April 1, 2011

TITLE:  
STATE OF ARIZONA,

(Plaintiff)

COUNSEL:  
Yavapai County Attorney  
Sheila Polk/Bill Hughes,  
(Via OnBase)  
(For Plaintiff)

v.

JAMES ARTHUR RAY,  
(Defendant)

Thomas K. Kelly,  
(Via electronic mail)  
(Co-Counsel for Defendant)

Luis Li/Brad Brian/Truc Do/Miriam Seifter  
MUNGER TOLLES & OLSON LLP,  
(Via electronic mail)  
(Co-Counsel for Defendant, *Pro Hac Vice*)

HEARING ON:  
TRIAL – Day 26

NATURE OF PROCEEDINGS

COURT REPORTER  
Mina Hunt

START TIME: 9:14 a.m.

APPEARANCES:

Sheila Polk, Counsel for State  
Bill Hughes, Co-Counsel for State  
Detective Ross Diskin, Case Agent  
James Arthur Ray, Defendant  
Tom Kelly, Co-Counsel for Defendant  
Luis Li, Co-Counsel for Defendant  
Truc Do, Co-Counsel for Defendant  
Miriam Seifter, Co-Counsel for Defendant  
Victim Services Representative

Rule 609 Hearing

The Court, Counsel, Detective Diskin, Defendant, and Victim Services Representative are present. The Jury is not present.

Court and Counsel discuss Rule 609 issue regarding a witness. Counsel for Defendant provides documents for the Court's review.

With regard to the aggravated DUI conviction of July 14, 1997, the Court **finds** the prior is more than ten years old and there is no indication there was a prison sentence. The Court **finds** there is not a notice issue. The Court **finds** the probative value of admitting the conviction does not substantially outweigh the prejudicial effect of its admission; the 1997 offense would not be admitted.

With regard to the false reporting conviction of August 13, 2002, the Court **finds** the conviction occurred within ten years and the offense involved dishonesty or false statement and that conviction would be admissible.

With regard to March 18, 2005 false reporting conviction, the Court **finds** the conviction is under 10 years old, involved dishonesty or false statement and will be admissible.

With regard to February 8, 2006, The Court **finds** the conviction would not be admissible under the law.

With regard to November 13, 2006 possession of drug paraphernalia, that would be admissible, the Court **finds**

that prior is a conviction under ten yrs old and was punishable by imprisonment for more than one year. The Court further **finds** the probative value of evidence of the prior conviction outweighs any prejudicial effect; that finding applies to all that the Court finds to be admissible.

The Court alerts Counsel to review 608(b).

Exhibits 812, 813 and 814 are offered and admitted into evidence without objection.

~~~Recess~~~

At 9:51 a.m. Court reconvenes, all previously appearing parties and the Jury are present.

Fawn Foster is sworn and testifies.

Exhibits 277 and 552 are offered and admitted into evidence without objection.

The Jury is reminded of the admonition, Fawn Foster is advised of the Rule for the exclusion of witnesses and excused for a recess.

~~~Recess~~~

At 11:15 a.m. Court reconvenes, all previously appearing parties and the Jury are present.

Fawn Foster resumes testimony.

Exhibits 232, 233 and 236 are admitted into evidence pursuant to stipulation of Counsel.

Court and Counsel conduct sidebar discussion outside of the presence of the Jury on the record.

The Jury is reminded of the admonition, Fawn Foster is reminded of the Rule for the exclusion of witnesses, excused for the lunch recess and exits the Courtroom.

Counsel argue their positions with regard to witness testimony, interviews, and disclosure.

Counsel for Defendant requests a stipulation be presented to the Jury that there is no record of the conversation with the Detective on October 8, 2011.

~~~Lunch Recess~~~

At 1:21 p.m. Court reconvenes, all previously appearing parties are present. The Jury is not present.

~~~Recess~~~

At 1:23 p.m. Court reconvenes, all previously appearing parties are present. The Jury is not present.

Counsel for Defendant makes offer of proof of un-admitted Exhibit 245 in regards to their objection relating to presentation of testimony of prior sweat lodge experiences at Angel Valley. Counsel for Defendant further advises Exhibits 518, 520, 521 and 522 are photos of the interior of the sweat lodge used on October 8, 2009. Oral argument ensues with review of the aforementioned exhibits and storage of the sweat lodge materials.

The Court advises foundation is needed before witnesses testify.

Court and Counsel discuss witness testimony.

The Court advises it is not going to allow the testimony before the foundation in this instance. The Court advises it has noted a number of witnesses have not been interviewed on a number of points.

~~~Recess~~~

At 1:40 p.m. Court reconvenes, all previously appearing parties and the Jury are present.

Fawn Foster resumes testimony.

Exhibit 238 is offered. There being an objection by Counsel, **IT IS ORDERED** sustaining the objection and Exhibit 238 is not admitted into evidence.

Court and Counsel conduct sidebar discussion outside of the presence of the Jury on the record.

Counsel for Petitioner requests the documents provided by Counsel for Defendant be marked and admitted as an exhibit. There being an objection the Counsel, **IT IS ORDERED** sustaining the objection and the document is not marked and admitted.

Exhibit 508 is admitted into evidence pursuant to stipulation of Counsel.

The Jury is reminded of the admonition, Fawn Foster is reminded of the Rule for the exclusion of witnesses and excused for a recess.

~~~Recess~~~

At 3:24 p.m. Court reconvenes, all previously appearing parties and the Jury are present.

Fawn Foster resumes testimony.

Exhibits 231, 234, 235 and 237 are offered and admitted into evidence without objection.

Court and Counsel conduct sidebar discussion outside of the presence of the Jury on the record.

Questions for the witness are submitted by the Jury, discussed at sidebar and are not asked.

The Jury is reminded of the admonition, advised to return on April 5, 2011 at 9:15 a.m. and excused for the weekend recess.

Fawn Foster is reminded of the Rule for the exclusion of witnesses and is temporarily excused subject to recall.

Court and Counsel conduct sidebar discussion outside of the presence of the Jury on the record.

The Court stands adjourned for the day.

**END TIME: 5:03 p.m.**

cc: Gallagher & Kennedy, P.C., Counsel for Shore Family (e)  
Murphy, Schmitt, Hathaway & Wilson, PLLC, Co-Counsel for Brown Family (e)  
Stone & Magnanini, Co-Counsel Brown Family (e)  
Aspey, Watkins & Diesel, PLLC, Counsel for Neuman Family (e)  
Steptoe & Johnson, Counsel for KPNX Broadcasting Company, TruTV and In Session (e)  
Perkins, Coie, Brown & Bain, Counsel KTVK-TV (e)  
Division PTB (e)  
Victim Services (e)  
Court Administration  
Customer Service Supervisor, Verde